

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.

)

WEDNESDAY, THE 28TH

JUSTICE HAINEY

)

DAY OF NOVEMBER, 2018

)

BETWEEN:



THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

BUILDING & DEVELOPMENT MORTGAGES CANADA INC.

Respondent

**APPLICATION UNDER SECTION 37 OF THE
MORTGAGE BROKERAGES, LENDERS AND ADMINISTRATORS ACT, 2006, S.O. 2006,
c. 29 and SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990 c. C.43**

BRAESTONE SETTLEMENT APPROVAL ORDER

THIS MOTION, made by FAAN Mortgage Administrators Inc. (“**FAAN Mortgage**”), in its capacity as Court-appointed trustee (in such capacity, the “**Trustee**”), of all of the assets, undertakings and properties of Building & Development Mortgages Canada Inc. (the “**Respondent**”) pursuant to section 37 of the *Mortgage Brokerages, Lenders and Administrators Act, 2006*, S.O. 2006, c. 29, as amended (the “**MBLAA**”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for an Order, *inter alia*, (i) approving and ratifying the Settlement Agreement dated as of October 17, 2018 (the “**Braestone Settlement**”

Agreement") among Braestone Development Corporation ("**Braestone**"), the Trustee and Olympia Trust Company ("**OTC**"); (ii) ordering Braestone to pay \$10 million to the Trustee pursuant to the Braestone Settlement Agreement; (iii) ordering Braestone, the Trustee and OTC to comply with the Braestone Settlement Agreement; (iv) authorizing the Trustee to make a further distribution of Realized Property to Investors; and (v) approving the Trustee's activities, and the fees and disbursements of the Trustee and its Legal Counsel, was heard this day at 330 University Avenue, Toronto, Ontario;

ON READING the Third Report of the Trustee dated November 19, 2018 (the "**Third Report**"), the affidavit of Naveed Manzoor sworn November 19, 2018 and attached as Appendix "8" to the Third Report (the "**Manzoor Affidavit**") and the affidavit of Michael De Lellis sworn November 19, 2018 and attached as Appendix "9" to the Third Report (the "**De Lellis Affidavit**" and, collectively, with the Manzoor Affidavit, the "**Fee Affidavits**"), and on hearing the submissions of counsel for the Trustee, Chaitons LLP, in its capacity as Representative Counsel, counsel for The Superintendent of Financial Services, counsel to Braestone and such other counsel as were present, no one appearing for any other person on the service list, as appears from the affidavit of service of Justine Erickson sworn November 22, 2018, filed;

SERVICE AND INTERPRETATION

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the Third Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that all capitalized terms used but not defined herein shall have the meanings given to them in the Third Report and the Braestone Settlement Agreement.

APPROVAL OF THE BRAESTONE SETTLEMENT AGREEMENT

3. **THIS COURT ORDERS** that (i) the Braestone Settlement Agreement be and is hereby approved in its entirety, with such minor amendments as the Trustee and the other parties to the Braestone Settlement Agreement may agree upon to permit the completion of the transaction contemplated thereby; (ii) Braestone is hereby directed to pay \$10 million forthwith to the Trustee in accordance with the terms of the Braestone Settlement Agreement (such funds the "**Braestone Realized Property**"); and (iii) the execution of the Braestone Settlement Agreement

by the Trustee and OTC is hereby ratified and approved, and the Trustee and OTC are hereby authorized and directed to comply with all of their obligations under the Braestone Settlement Agreement.

4. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Trustee's certificate to Braestone substantially in the form attached as Schedule "A" hereto (the "**Trustee's Certificate**"), all of Braestone's obligations to Building & Development Mortgages Canada Inc. ("**BDMC**"), OTC, and the individual lenders (the "**Braestone Individual Lenders**") under the Loan Agreement dated as of December 1, 2012 between BDMC and Braestone (the "**Loan Agreement**"), the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Braestone Loan Obligations**") and all security interests granted to BDMC, OTC or the Braestone Individual Lenders in and to the assets of Braestone to secure the Braestone Loan Obligations and related registrations on title (the "**Loan Encumbrances**") are hereby released, extinguished, expunged, discharged and deleted and that none of the Trustee, BDMC, OTC or any Braestone Individual Lender shall have any claim against Braestone in respect of the Braestone Loan Obligations or the Loan Encumbrances; provided, however, that Braestone shall not be released from any obligations under the Braestone Settlement Agreement.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of the Trustee's Certificate, the Braestone Realized Property is and shall be deemed to be "Realized Property" as defined in the Order of this Court dated June 26, 2018 (the "**Interim Stabilization Order**") and that all of the Braestone Individual Lenders' rights and claims under the Loan Agreement, the Security and the Loan Documents shall attach to the Braestone Realized Property and shall have the same nature and priority as they had prior to the consummation of the Braestone Settlement Agreement, including pursuant to the Appointment Order and the Interim Stabilization Order.

6. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Registry Division of Simcoe (#51) of an Application for Vesting Order in the form prescribed by the applicable Land Registry Office and attaching a copy of this Order and the executed Trustee's Certificate, the Land Registrar is hereby directed to delete and expunge from title to the real property identified in Schedule "B" hereto (the "**Real Property**") all of the Loan Encumbrances listed in Schedule "C" hereto.

7. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the release agreement in the form attached as Schedule "D" hereto ("**Release Agreement**") to be given to the Trustee, BDMC, OTC, and each Braestone Individual Lender who loaned funds through BDMC or OTC to Braestone pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the "**Releasees**") by Braestone on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns (collectively, the "**Releasers**") shall be binding and effective on the Releasers in favour of the Releasees.

8. **THIS COURT ORDERS AND DIRECTS** the Trustee to file with the Court a copy of the Trustee's Certificate, as soon as practicable after delivery thereof.

REALIZED PROPERTY

9. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, the Trustee shall make a further distribution to Investors in an amount equal to 10% of the Realized Property held on the date of the Appointment Order, including the Realized Property obtained with respect to the Victoria Medical SML Loans, *pro rata* to the Investors entitled to such funds, such that, when combined with the distributions made pursuant to the Interim Stabilization Order and the Order of this Court dated October 30, 2018 ("**Realized Property Order**"), 80% of such funds shall have been distributed on a *pro rata* basis to the Investors entitled to such funds.

10. **THIS COURT ORDERS** that upon the delivery of the Trustee's Certificate, paragraph 3(b) of the Realized Property Order is hereby amended to provide that the Trustee shall distribute 80% of all other Realized Property obtained, including the Braestone Realized Property, *pro rata* to the Investors entitled to such funds, whether received before or after the date of this Order.

TRUSTEE'S ACTIVITIES, FEES AND DISBURSEMENTS

11. **THIS COURT ORDERS** that the First Report, the Second Report and the Third Report and all of the actions, conduct and activities of the Trustee as set out in therein, are hereby approved.

12. **THIS COURT ORDERS** that the fees and disbursements of the Trustee and its counsel, as set out in the Third Report and the Fee Affidavits, are hereby approved, as follows:

- (a) The following fees and disbursements of the Trustee for the period from April 20, 2018 to September 30, 2018 are approved: fees of \$734,428.20 (plus applicable taxes of \$95,475.67 for an aggregate amount of \$829,903.87); and
- (b) The following fees and disbursements of Osler, Hoskin & Harcourt LLP, counsel to the Trustee, for the period from April 20, 2018 to September 30, 2018 are approved: fees of \$782,270.50 and disbursements of \$6,288.38 (plus applicable taxes of \$102,427.65 for an aggregate amount of \$890,986.53).

SEALING

13. **THIS COURT ORDERS** that the Confidential Manzoor Exhibit and the Confidential De Lellis Exhibit shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

AID AND RECOGNITION OF FOREIGN COURTS

14. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Trustee and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Trustee and its agents in carrying out the terms of this Order.

15. **THIS COURT ORDERS** that the Trustee be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Trustee is authorized and empowered to act as a representative in respect of the within

proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

Hailey

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

NOV 28 2018

PER / PAR: *RW*

Schedule "A" – Form of Trustee's Certificate

Court File No.: CV-18-596204-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE SUPERINTENDENT OF FINANCIAL SERVICES

Applicant

- and -

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TRUSTEE'S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice [Commercial List] (the "**Court**") dated April 20, 2018, FAAN Mortgage Administrators Inc. was appointed as the trustee (the "**Trustee**") of the undertaking, property and assets of Building & Development Mortgages Canada Inc. ("**BDMC**").

B. Pursuant to an Order of the Court dated [DATE] (the "**Braestone Settlement Approval Order**"), the Court approved and ratified the Settlement Agreement made as of October 17, 2018 (the "**Braestone Settlement Agreement**") among Braestone Development Corporation ("**Braestone**"), the Trustee and Olympia Trust Company ("**OTC**") and ordered that all of

Braestone's obligations to BDMC, OTC, and the individual lenders ("**Braestone Individual Lenders**") under the Loan Agreement, the Security and the Loan Documents (each as defined in the Loan Agreement) (collectively, the "**Braestone Loan Obligations**") and all security interests granted to BDMC, OTC or the Braestone Individual Lenders in and to the assets of Braestone to secure the Braestone Loan Obligations (the "**Loan Encumbrances**") are hereby released, extinguished, expunged and discharged and that none of the Trustee, BDMC, OTC or any Braestone Individual Lender shall have any claim against Braestone in respect of the Braestone Loan Obligations or the Loan Encumbrances; provided, however, that Braestone shall not be released from any obligations under the Braestone Settlement Agreement; and that the release of the Braestone Loan Obligations and the Loan Encumbrances is to be effective upon the delivery by the Trustee to Braestone of a certificate confirming (i) the payment of \$10 million to the Trustee by Braestone; (ii) that the conditions precedent to the Braestone Settlement Agreement as set out in section 9 of the Braestone Settlement Agreement have been satisfied or waived by the Trustee; and (iii) the settlement has been completed to the satisfaction of the Trustee.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Braestone Settlement Approval Order.

THE TRUSTEE CERTIFIES the following:

1. Braestone has paid and the Trustee has received \$10 million pursuant to the Braestone Settlement Agreement;
2. Braestone has provided the Release Agreement to the Releasees;
3. Braestone has certified that all of the representations and warranties contained in this Braestone Settlement Agreement continue to be true as of the Effective Date;
4. Braestone continues to be, in the reasonable opinion of the Trustee, in compliance with all of the terms of the Braestone Settlement Agreement;
5. The other conditions set out in the Braestone Settlement Agreement have been satisfied or waived by the Trustee; and
6. The settlement has been completed to the satisfaction of the Trustee.

This Certificate was delivered by the Trustee at _____ [TIME] on _____ [DATE].

**FAAN Mortgage Administrators Inc., solely
in its capacity as Court-appointed Trustee of
the undertaking, property and assets of
Building & Development Mortgages Canada
Inc., and in no other capacity**

Per: _____

Name:

Title:

Schedule "B" – Real Property

PIN	DESCRIPTION	REGISTERED OWNER
58532-0214 (LT)	LOT 10, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	BRAESTONE DEVELOPMENT CORPORATION
58532-0215 (LT)	LOT 11, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0216 (LT)	LOT 12, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0217 (LT)	LOT 13, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0218 (LT)	LOT 14, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0219 (LT)	LOT 15, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0220 (LT)	LOT 16, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0221 (LT)	LOT 17, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0222 (LT)	LOT 18, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0223 (LT)	LOT 19, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0224 (LT)	LOT 20, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0225 (LT)	LOT 21, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0226 (LT)	LOT 22, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0227 (LT)	LOT 23, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0228 (LT)	LOT 24, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0236 (LT)	LOT 32, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0244 (LT)	LOT 40, PLAN 51M1113, SAVING AND	

PIN	DESCRIPTION	REGISTERED OWNER
	RESERVING FROM THE E 1/2 LT2 CON 9, ALL MINES AND MINERALS, WHETHER SOLID, LIQUID OR GASEOUS, WHICH MAY BE FOUND TO EXIST WITHIN, UPON OR UNDER SUCH LANDS T/W FULL POWER TO WORK THE SAME AND FOR THIS PURPOSE TO ENTER UPON, USE AND OCCUPY THE SAID LANDS OR SO MUCH THEREOF AND TO SUCH EXTENT AS MAY BE NECESSARY FOR THE EFFECTUAL WORKING AND EXTRACTING OF THE SAID MINERALS, AS DESCRIBED IN ORO17078; TOWNSHIP OF ORO-MEDONTE	
58532-0253 (LT)	LOT 49, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0255 (LT)	LOT 51, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0256 (LT)	LOT 52, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0257 (LT)	LOT 53, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0258 (LT)	LOT 54, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0259 (LT)	LOT 55, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0260 (LT)	LOT 56, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0261 (LT)	LOT 57, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0262 (LT)	LOT 58, PLAN 51M1113; TOWNSHIP OF ORO-MEDONTE	
58532-0275 (LT)	PCL 2-1 SEC 51-ORO-9; LT 3 CON 9 ORO BEING THE E 1/2 & W 1/2; LT 2 CON 9 ORO BEING THE E 1/2 & W 1/2; PT 1, 51R21804, EXCEPT PT 1, 51R28741 & EXCEPT PLAN 51M1070 &	

PIN	DESCRIPTION	REGISTERED OWNER
	<p>51M1113; SAVING AND RESERVING FROM THE E 1/2 LT2 CON 9, ALL MINES AND MINERALS, WHETHER SOLID, LIQUID OR GASEOUS, WHICH MAY BE FOUND TO EXIST WITHIN, UPON OR UNDER SUCH LANDS T/W FULL POWER TO WORK THE SAME AND FOR THIS PURPOSE TO ENTER UPON, USE AND OCCUPY THE SAID LANDS OR SO MUCH THEREOF AND TO SUCH EXTENT AS MAY BE NECESSARY FOR THE EFFECTUAL WORKING AND EXTRACTING OF THE SAID MINERALS, AS DESCRIBED IN ORO17078; ORO-MEDONTE TOWNSHIP OF ORO-MEDONTE; SUBJECT TO AN EASEMENT IN GROSS OVER PT E1/2 LOT 2 CON 9 ORO BEING PT 1 ON PL 51R40262 AS IN SC1266952</p>	

Schedule "C" – Loan Encumbrances

<i>Registration No.</i>	<i>Date</i>	<i>Type of Instrument</i>
SC1039835	2013 02 07	Charge/Mortgage
SC1228105	2015 07 20	Transfer Of Charge
SC1039845	2013/02/07	Transfer Of Charge
SC1043202	2013/03/01	Transfer Of Charge
SC1047816	2013/03/28	Transfer Of Charge
SC1053414	2013/04/29	Transfer Of Charge
SC1055391	2013/05/08	Notice
SC1055397	2013/05/08	Transfer Of Charge
SC1058805	2013/05/28	Transfer Of Charge
SC1064131	2013/06/20	Notice
SC1065073	2013/06/25	Transfer Of Charge
SC1069850	2013/07/15	Transfer Of Charge
SC1079799	2013/08/23	Transfer Of Charge
SC1087288	2013/09/24	Transfer Of Charge
SC1092496	2013/10/16	Notice
SC1101397	2013/11/26	Transfer Of Charge
SC1107522	2013/12/20	Transfer Of Charge
SC1113714	2014/02/03	Transfer Of Charge
SC1125391	2014/04/16	Transfer Of Charge
SC1128168	2014/05/01	Transfer Of Charge
SC1159897	2014/09/15	Postponement Of Interest
SC1228105	2015/07/20	Transfer Of Charge
SC1231512	2015/07/30	Postponement Of Interest
SC1295590	2016/04/13	Postponement Of Interest
SC1331143	2016/08/12	Application To Change Name- Instrument
SC1339671	2016/09/06	Postponement Of Interest
SC1421440	2017/06/19	Postponement Of Interest

Schedule “D” – Release Agreement

[Date]

TO: FAAN Mortgage Administrators Inc. (the “**Trustee**”)

AND TO: Olympia Trust Company (“**OTC**”)

Re: Release granted in connection with repayment and settlement of the Obligations pursuant to Braestone Settlement Agreement

Dear Sirs/Mesdames

Reference is made to the Loan Agreement dated as of December 1, 2012 (the “**Loan Agreement**”) between Braestone Development Corporation (“**Braestone**”) and Building & Development Mortgages Canada Inc. (“**BDMC**”) and the related Security and Loan Documents. All capitalized terms used in this agreement (the “**Release Agreement**”) shall, unless otherwise defined herein, have the same meanings given to them in the Loan Agreement or the Settlement Agreement dated as of [date] among Braestone, the Trustee and OTC (the “**Settlement Agreement**”).

1. Braestone hereby certifies that all of the representations and warranties contained in the Settlement Agreement are true and accurate as of the date hereof and that it is in compliance with all covenants, terms and provisions of the Settlement Agreement.
2. Braestone has paid the Trustee \$10,000,000 pursuant to the Settlement Agreement and waives any right of set-off or any other defence.
3. In consideration of the acceptance of \$10,000,000 in full and final satisfaction of Obligations payable to BDMC by Braestone under the Loan Agreement in excess of \$16,020,120 and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Braestone (on behalf of itself, its affiliates, and their respective shareholders, agents, directors, officers, employees, and each of their respective successors and assigns) (collectively, the “**Releasers**”) hereby releases, discharges and acquits the Trustee, BDMC, OTC, and each lender or investor who loaned funds through BDMC or OTC to Braestone pursuant to the Loan Agreement and all related Loan Documents, each of their respective officers, directors, agents, employees, and each of their respective successors and assigns (collectively, the “**Releasees**”) from any and all claims, demands, rights, liabilities, and causes of action, whether in law or in equity, whether known or unknown, that any Releaser, at any time had or has, or that they or their respective successors or assigns hereafter have or may have against the Releasees directly or indirectly arising out of or in any way related to the Loan Agreement, the Loan Documents, the proceedings initiated by the Order of the Ontario Superior Court of Justice (Commercial List) dated April 20, 2018, or any transactions hereunder or thereunder.

This Release Agreement shall be effective immediately upon the delivery of the Trustee's Certificate and may be relied upon by any of the Releasees, whether or not such Releasee is a party to this Release Agreement or the Settlement Agreement.

This Release Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, and may be executed and delivered by facsimile or .pdf file transmitted by email, and all such counterparts, .pdf files and facsimiles when so executed and delivered shall be deemed to be an original and all of which when taken together shall constitute but one and the same Release Agreement.

This Release Agreement shall be construed in accordance with and governed by the laws of the Province of Ontario.

Yours truly,

**BRAESTONE DEVELOPMENT
CORPORATION**

By:

Name:

Title:

Accepted and agreed to by:

**FAAN MORTGAGE
ADMINISTRATORS INC.**, solely in its
capacity as Court-appointed Trustee of
Building & Development Mortgages Canada
Inc. and in no other capacity

By:

Name:

Title:

THE SUPERINTENDENT OF FINANCIAL SERVICES

- and -

**BUILDING & DEVELOPMENT MORTGAGES CANADA
INC.**

Applicant

Respondent

Court File No. CV-18-596204-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

BRAESTONE SETTLEMENT APPROVAL ORDER

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSUC# 48038U)
Jeremy Dacks (LSUC# 41851R)
Patrick Riesterer (LSUC# 60258G)

Tel: (416) 362-2111
Fax: (416) 862-6666

Lawyers for FAAN Mortgage Administrators Inc.,
in its capacity as Court-appointed Trustee